U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34874447

Date: NOV. 18, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is the executive producer for a production company in Brazil and the chief executive office of a television channel for a Brazilian audience based in [redacted] Florida. The Petitioner intends to continue his work in the field of content production in the United States.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director determined that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(iii), relating to published material about himself and his work, and we will not disturb that determination. The Director concluded, however, that the Petitioner did not meet claimed criteria at 8 C.F.R. § 204.5(h)(3)(v), (vii), (viii), or (x). On appeal, the Petitioner asserts that he meets these criteria—with the exception of the criterion at (vii) relating to display of his work, which he does not address.[1] The Petitioner submits new and previously submitted documentation discussing the responsibilities of executive producers and information about the [redacted] television shows that he has produced, and information about banks for which he has produced commercials. As more fully discussed below, we conclude that the Petitioner has not met at least three of the required criteria.

> *Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).*

Initially, the Petitioner cited several elements of his professional experience as evidence of his original artistic contributions of major significance to the field of content production, including a certificate of appreciation for his sponsorship of the [redacted] while working for [redacted] We note that the intent behind the inclusion of this latter documentation is unclear, as neither the certificate nor a supporting letter concerning the certificate specifies what the Petitioner's sponsorship entailed or how it would be considered an original contribution or major significance to the field.

On appeal, the Petitioner again points to documentation previously submitted as evidence that he meets this criterion; he references his work on original movies and television series for which the record shows he served in various production roles, and he states that his original contributions of major significance "are evidenced by the significant recognitions from organizations of distinguished

[1] An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

reputation that systematically retained the Petitioner to perform work, as well as the media publications and nominations that the Petitioner's work has achieved." The record shows that the Petitioner and his company have produced content for [redacted] and other clients, that he and his work have been discussed in several publications, and that one piece which he produced received an Emmy nomination. While entertainment and marketing content produced by the Petitioner may be considered "original" in an artistic sense, the evidence discussing or recognizing his work does not identify any aspect of that work that constituted a contribution of major significance in the field. On appeal, the Petitioner further claims the following:

> The major significance of his contributions is represented by the influence and reputation that he acquired in the field of artistic production. For example, major organizations became influenced by the original products that he was generating and started to retain the Petitioner for unique and original artistic work in different market sectors.

The record does not include evidence sufficient to support these assertions. Neither the articles about his work nor the two letters of support submitted from previous colleagues reference the influence of his work. Specifically, the articles discuss his establishment of a Brazil-focused television channel in [redacted] and provide information for movies and television programs that either he or his company in Brazil were involved in producing; the letters of support reference his qualities as a producer, such as his skill, dedication, and reliability. However, these documents do not highlight any specific original contributions of significance on any level that he has made to the field.[2] The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. He has not done so here. As such, the Petitioner has not met the requirements for this criterion.

> *Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).*

On appeal, the Petitioner cites his previous work experience to demonstrate that he has performed in leading and critical roles for organizations or establishments that have a distinguished reputation. He describes the roles and responsibilities of executive producers and asserts that his company, which produced a movie released in Brazil that received several award nominations, is a "distinguished production company." The record, however, does not include sufficient documentation to support this assertion; articles and letters that reference the Petitioner's production company do not discuss its stature within the fields of film or television production, and the record does not otherwise include evidence providing information about the reputation of the company.[3]

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[2] 6 *USCIS Policy Manual* F.2(B)(5), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.

[3] 6 *USCIS Policy Manual* F.2(B)(8), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. In evaluating whether a distinguished reputation exists, the relative size or longevity of an organization or establishment is not in and of itself a determining factor but is considered together with other information. Other relevant factors for evaluating the reputation of an organization or establishment can include the scale of its customer base or relevant media coverage.

As to the company's association with organizations that the Petitioner claims have distinguished reputations, the Petitioner submitted documentation to demonstrate his company's working relationships with [redacted] While the record reflects that these are distinguished organizations and that the Petitioner's company has provided them with professional services, the record does not demonstrate that the Petitioner himself performed in a leading or critical role for either [redacted][4] For example, a production services agreement between his company and [redacted] stipulates that the Petitioner's company will be responsible for its employees and that there will be no "labor relationship" between those employees and [redacted] And although a letter of support from an executive with [redacted] describes the Petitioner's talent and professionalism, it does not describe any leading or critical roles performed by the Petitioner for [redacted] The Petitioner's company may have provided services to [redacted] in the form of producing shows for [redacted] but the record does not contain documentation to clarify how the Petitioner's role as an executive producer for his company constituted his performance in a leading or critical role within any component of the [redacted] organization or for [redacted] The Petitioner has not met the requirements of this criterion.

> *Evidence of the individual's commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).*

The Petitioner provides the following on appeal concerning the commercial success of his work as it relates to this criterion:

> The Petitioner has successfully operated his own production company and has attracted the attention of distinguished organizations that retained his services for substantial fees, as demonstrated by the contracts submitted by the Petitioner.
>
> Therefore, we understand that the Petitioner's commercial success in the performing arts is demonstrated by the revenues he generated from his activity in his field of extraordinary ability. Also, the constant demand that the Petitioner receives for his services and the media exposure that his work has sustained in major media throughout the years are additional evidence and important factors to consider for this criterion.

The USCIS Policy Manual provides that this criterion focuses on volume of sales and box office receipts as a measure of an individual's commercial success in the performing arts, and that the mere fact that an individual has recorded and released commercial productions is insufficient, in and of itself, to meet the requirements of this criterion.[5] The Petitioner's assertions here concerning any purported "constant demand" for his services or "media exposure" are not sufficient, without more, to establish eligibility under this criterion. The Petitioner appears to rely on his contractual agreements for services, such as one he provided from [redacted] to demonstrate that he meets this criterion because the agreement includes "substantial fees" to be paid to his company. The Petitioner has not provided

[4] 6 *USCIS Policy Manual* F.2(B)(8), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. For a leading role, we look at whether the evidence establishes that the individual is (or was) a leader within the organization. For a critical role, we look at whether the evidence establishes that the individual has contributed in a way that is of significant importance to the outcome of the organization's activities.

[5] *See* 6 *USCIS Policy Manual* F.2(B)(10), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

an explanation of how such fees serve as evidence of the commercial success of his television productions for [redacted] and the record does not include probative evidence concerning sales volumes for any of his other productions. The Petitioner has not met the requirements of this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation that the Petitioner meets at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.[6] Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the record indicates that the Petitioner made provided satisfactory services in his field, but it does not show that this success has translated into individual recognition for the Petitioner at a level that rises to sustained national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).